IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14326 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALIKA BUILDCON PVT.LTD. THR' DIRECTOR-AMARISH PATEL - Petitioner

Versus

TORRENT POWER AEC LTD. THR' GENERAL MANAGER & 1 - Respondents

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Appearance :

MRS FALGUNI D PATEL for Petitioner.
NOTICE NOT RECD BACK for Respondent : 1.
MR RM CHHAYA for Respondent- 2.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 24/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Rule. Mr.R.M.Chhaya, learned counsel, waives service of notice on behalf of the respondent No.2. The record indicates that though the respondent No.1 i.e. Torrent Power AEC Ltd., is duly served with notice for final disposal of the petition, it has neither appeared through its Lawyer or through its constituted agent, nor has filed reply controverting the averments made in the petition. Under the circumstances, this Court is of the opinion that it is not necessary for the petitioner to effect service of notice of rule issued in this petition upon the respondent No.1. Having regard to the facts of the case, the petition is taken up for final disposal today.

2. By filing this petition under Article 226 of the Constitution, the petitioner i.e. Mr.Amarishbhai Patel, who is one of the Directors of Kalika Buildcon Pvt.Ltd., having its office at 3rd Eye Commercial Complex, Panchvati Panch Rasta, Ambavadi, Ahmedabad, has prayed to issue a writ of mandamus or any other appropriate writ or

order, directing the respondent No.1 i.e. Torrent Power AEC Ltd., to supply electric connection to 45 Commercial Units constructed by the petitioner on Final Plot Nos.617/1 + 617/2 of T.P.Scheme No.3, Ellisbridge.

3. From the averments made in the petition, it is evident that Final Plot Nos.617/1 + 617/2 of T.P.Scheme No.3, Ellisbridge are owned by (1) Pratul Krushnakant Shroff for self and as Karta of his H.U.F., (2) Sujata Krushnakant Shroff, and (3) Suryakant Ratilal for self and as Karta of his H.U.F. The owners were desirous of developing the plots belonging to them. Therefore, they applied to the Ahmedabad Municipal Corporation to permit them to develop their property. The record shows that the Ahmedabad Municipal Corporation granted Commencement Letter (Rajachithhi) on April 4, 2006, which is quite evident from the contents of copy of the document produced at Annexure-A to the petition. The petitioner i.e. Mr.Amarishbhai Patel is Director of Kalika

Buildcon Pvt.Ltd. A development agreement was executed/signed between Kalika Buildcon Pvt.Ltd. and owners of the Final Plots mentioned above, pursuant to which, the petitioner has constructed 29 Commercial Units. After construction of the Commercial Units was over, it was obligatory for the petitioner to obtain Building Use Permission and thereafter to apply to the respondent No.1 for supply of electricity connection to the constructed units. However, without obtaining Building Use Permission, the petitioner applied to the respondent No.1 for supply of electricity connection to 45 Commercial Units constructed by him. The said request has been turned down, which is quite evident from the contents of letter dated June 29, 2006 addressed by the General Manager of the respondent No.1, a copy of which is produced at Annexure-B to the petition. By the said communication, respondent No.1 has called upon the petitioner to produce either Building Use Permission or conditional order of the High Court to enable it to supply electricity

connection to the Commercial Units constructed by him. Under the circumstances, the petitioner has filed the instant petition and claimed reliefs to which reference is made earlier.

4. This petition was placed for admission hearing on July 2, 2006 and after hearing the learned counsel for the petitioner, notice for final disposal of the petition was issued making it returnable on August 17, 2006. As noticed earlier, though the respondent No.1 is duly served, it has neither appeared before the Court nor contested the petition.

5. This Court has heard Ms.Falguni D.Patel, learned counsel for the petitioner, and Mr.R.M.Chhaya, learned counsel for the respondent No.2. This Court has also considered the documents forming part of the petition. Having regard to the facts of the case, this Court is of the opinion that interest of justice would be served if following directions are issued:

(1) The petitioner will approach the Ahmedabad Municipal Corporation for obtaining Building Use Permission within thirty days from today with a proper application/form/format and by paying requisite fee, if any.

(2) The Ahmedabad Municipal Corporation is directed to take decision on the application, which may be submitted by the petitioner, within four months from the date of receipt of the same.

(3) The petitioner shall apply to the respondent No.1., i.e. Torrent Power AEC Limited, for providing electricity connection to 29 commercial units, as commencement-letter authorises the petitioner to construct only 29 units, with a proper application/form/format and by paying charges within a week.

(4) The respondent No.1, i.e. Torrent Power AEC Limited, is directed to provide electricity connection to 29 commercial units only constructed by the petitioner within one month on usual terms and conditions.

(5) In case the Ahmedabad Municipal Corporation is not approached by the petitioner for obtaining Building Use Permission within the period stipulated in this order, the Ahmedabad Municipal Corporation shall inform the Torrent Power AEC Limited to disconnect the electricity supply made available to 29 commercial units constructed by the petitioner and in such an eventuality, it would be open to the Torrent Power AEC Limited to disconnect the electricity supply provided to 29 commercial units constructed by the petitioner within a period of fifteen days.

(6) In case the Ahmedabad Municipal Corporation does not grant Building Use Permission, it will ask the Torrent Power AEC Limited to disconnect the electricity supply provided to 29 commercial units constructed by the petitioner within a period of fifteen days and, thereupon, it would be open to the Torrent Power AEC Limited to disconnect the electricity supply provided to 29 commercial units constructed by the petitioner.

(7) The petitioner shall file an Undertaking before the Torrent Power AEC Limited to the effect that in the event the Building Use Permission is not granted by the Ahmedabad Municipal Corporation, the petitioner will have no objection to disconnection of electricity supply provided to 29 commercial units constructed by it. This Undertaking shall be filed along with the application/form/format meant for the

purpose.

Rule is made absolute subject to above referred to directions. There shall be no order as to costs. Direct Service is permitted.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

(patel)